Supreme Court, U.S.
FILED
JAN 8 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-749

In The
Supreme Court of the United States
October Term, 1986

BOARD OF TRUSTEES OF
ALABAMA STATE UNIVERSITY,

Petitioner,

v.

ALABAMA STATE BOARD OF EDUCATION; and
WAYNE TEAGUE, STATE SUPERINTENDENT
OF EDUCATION, *et al.*,

Respondents.

RESPONSE OF ALABAMA STATE BOARD OF EDUCATION; AND WAYNE TEAGUE, STATE SUPERINTENDENT OF EDUCATION, RESPONDENTS, TO ALABAMA STATE UNIVERSITY'S PETITION FOR WRIT OF CERTIORARI

CHARLES S. COODY
Office of General Counsel
State Department of Education
609 State Office Building
Montgomery, Alabama 36130
(205) 261-5320

Attorney for Respondents
Alabama State Board of
Education; and Wayne Teague,
State Superintendent of
Education

January, 1987

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

I. QUESTIONS PRESENTED FOR REVIEW

A. Whether Alabama State University can acquire constitutional or statutory rights against its creator arising out of its duty to comply with a neutral state regulation.

B. Whether, after accepting the Court of Appeals' holding that it has no rights, Alabama State University may premise its standing on the rights of third parties already represented in the litigation.

C. Whether the Court of Appeals acted properly when it determined that Alabama State University lacked standing.

II. PARTIES IN THE COURT BELOW

The Petitioner has properly named the parties in the Court below except that Nolan Williams, formerly an elected member of the State Board of Education, has resigned. In accordance with state law, the Governor of Alabama has appointed Steadman Shealy to the State Board of Education. This information is provided to the Court in consonance with Rule 40.3, Supreme Court Rules.

III. TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
PARTIES IN THE COURT BELOW	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	2
SUMMARY OF THE ARGUMENT	5
ARGUMENT	6
A. Alabama State University Has No Independent Constitutional Or Statutory Rights Against Its Creator And Cannot Acquire Such Rights Arising Out Of Its Duty To Comply With A Neutral State Regulation	6
B. Alabama State University Legitimately Cannot Premise Its Standing On The Rights Of Third Parties Who Are Already Represented In This Litigation.	9
C. The Court Of Appeals Acted Properly When It Determined That Alabama State University Lacked Standing.	14
CONCLUSION	16

IV. TABLE OF AUTHORITIES

Pages

CASES

Alexander v. Louisiana, 405 U.S. 625, 92 S.Ct. 1221, 31 L.Ed.2d 536 (1972) 8

Board of Education v. Allen, 392 U.S. 236, 88 S.Ct. 1923, 20 L.Ed.2d 1060 (1968) 7

Bob Jones University v. United States, 461 U.S. 574, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983) 9

Buckley v. Valeo, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) 14, 15

Cannon v. University of Chicago, 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979) 7

City of Trenton v. State of New Jersey, 262 U.S. 182, 43 S.Ct. 534, 67 L.Ed. 937 (1923) 7

Coleman v. Miller, 307 U.S. 433, 59 S.Ct. 972, 83 L.Ed. 1385 (1939) 7

Craig v. Alabama State University, 451 F.Supp. 1207 (M.D. Ala. 1978), affirmed 614 F.2d 1295 (5th Cir. 1980), *cert. denied, sub nom., Dutt v. Alabama State University*, 449 U.S. 862, 101 S.Ct. 167, 66 L.Ed.2d 79 (1980) 12

Craig v. Alabama State University, 804 F.2d 682 (11th Cir. 1986) 12

Hunter v. City of Pittsburg, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907) 7

Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979) 8

Singleton v. Wulff, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976) 11, 12

TABLE OF AUTHORITIES—Continued

Pages

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 102 Sup. Ct. 752, 70 L.Ed.2d 700 (1982) 10, 11

Village of Arlington Heights v. Metropolitan Housing Development Corporation, 429 U.S. 252, 97 S.Ct. 555, 50 L.Ed.2d 450 (1977) 10

Washington v. Davis, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976) 8

Watt v. Energy Action Educational Foundation, 454 U.S. 151, 102 S.Ct. 205, 70 L.Ed.2d 309 (1981) 15

Williams v. Mayor and City Council of Baltimore, 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933) 7

STATUTES

Alabama Constitution of 1901, Amendment No. 284 2

Code of Ala. (1975) § 16-23-2 2

Code of Ala. (1975) § 16-23-14 2

Code of Ala. (1975) § 16-23-16 2

Code of Ala. (1975) § 16-4-4 2

U.S. Const., Fourteenth Amendment 3, 5, 6, 7, 8, 9, 10, 12

42 U.S.C. § 2000d 5, 6, 7, 9, 10, 12

Rule 23, Federal Rules of Civil Procedure 14

No. 86-749

In The

Supreme Court of the United States

October Term, 1986

BOARD OF TRUSTEES OF
ALABAMA STATE UNIVERSITY,

Petitioner,

v.

ALABAMA STATE BOARD OF EDUCATION; and
WAYNE TEAGUE, STATE SUPERINTENDENT
OF EDUCATION, *et al.,*

Respondents.

RESPONSE OF ALABAMA STATE BOARD OF EDUCATION; AND WAYNE TEAGUE, STATE SUPERINTENDENT OF EDUCATION, RESPONDENTS, TO ALABAMA STATE UNIVERSITY'S PETITION FOR WRIT OF CERTIORARI

Petitioner, Alabama State University, states that the decision of the Court of Appeals "*may* cripple the ability of the petitioner to carry out its constitutional obligations and to represent the interests of its present and prospective students and faculty in the continuing case in chief . . ." Petition for Writ of Certiorari at 1 (emphasis added). Thus, petitioner asks this Court to review the decision of the Court below solely on the speculative basis

of what *might happen* as a result of the Court of Appeals' decision. Such conjecture, unsubstantiated by any facts, is not a sufficient basis upon which to seek a Petition for Writ of Certiorari. For this reason and the reasons to follow, the Petition should not be granted.

—o—

V. STATEMENT OF THE CASE

Generally, the procedural history of this case recited by the Petitioner is correct. However, certain additional facts not stated in the petitioner's statement of the case are necessary to this Court's full understanding of the issues.

The Alabama State Board of Education, respondent, is established by the Constitution of Alabama and charged with the responsibility of general supervision of the public schools in Alabama. Alabama Constitution of 1901, Amendment No. 284. Additionally, the Legislature of Alabama has made the Alabama State Board of Education responsible for regulating the certification of teachers and for the establishing of standards for the preparation of teachers by institutions of higher education. Code of Ala. (1975) §§ 16-23-2, and 16-23-14 through 16-23-16.[1]

---

1. Respondent, Wayne Teague, State Superintendent of Education, is generally responsible for the enforcement of the education laws of Alabama, Code of Ala. (1975) § 16-4-4, and specifically responsible for the administration of the regulations for preparation of teachers, Code of Ala. (1975) § 16-23-16.

The preliminary injunction which is at issue in this case arose out of an ancillary proceeding which followed the liability phase of the case on the merits which was tried in July 1985. Responding to certain actions taken by the Alabama State Board of Education following the trial of the case on the merits, Alabama State University filed a motion for temporary restraining order and a verified complaint.[2] In its motion for a temporary restraining order, Alabama State University alleged that *it* would suffer injury unless the temporary restraining order issued. Likewise, in the verified complaint at paragraph 8, Alabama State University alleged that the deprivation of a major portion of its teacher education program would violate *its* rights to due process and equal protection under the Fourteenth Amendment.

It is correct that throughout the verified complaint, Alabama State University variously alleged that the action by the Alabama State Board of Education would adversely affect Alabama State University's students and faculty. However, nowhere in the motion for a temporary restraining order or in the verified complaint did Alabama State University allege that it had standing based on injury to its faculty and students. Rather, the injury asserted by Alabama State University was an injury to it in its institutional capacity.[3]

---

2. These documents are included in the Appendix to this brief.

3. Thus, petitioner's, Alabama State University, assertion in its petition at 4 which makes it appear that it originally sought relief to prohibit interference with the jurisdiction of the District Court is not correct. Originally this ground for relief was asserted only by the Knight Intervenors.

In the proceedings in the District Court below, Alabama State University challenged regulations of the Alabama State Board of Education which require that some members of an institution's faculty in teacher education programs have experience in the areas which they teach. Alabama State University admitted that this experience requirement was properly adopted by the Alabama State Board of Education as part of its regulatory authority over teacher education programs. *See* paragraph 2 of verified complaint at App. 5, *ante*. With respect to this regulation, the District Court stated as follows:

> The faculty experience standard, based on the evidence, is of uncertain origin and intent. Its interpretation is susceptible to arbirtray results. With respect to superintendent programs, the evidence tends to indicate that the requirement disproportionately affects black faculty and institutions.

Opinion of District Court at 20a, Appendix to Petition for Writ of Certiorari.

Additionally, the District Court stated that no evidence was presented that failure to implement this experience requirement would adversely affect the quality of teacher education programs. On these bases, the District Court entered an injunction against the Alabama State Board of Education and the State Superintendent of Education prohibiting them from enforcing the faculty experience requirement against Alabama State University. Aside from programs affected by the experience requirement, other programs at Alabama State University were not granted renewed approval for continuation. The District Court found that this action by the Alabama State Board of Education was premised upon an impermissible

retaliatory motive occasioned by Alabama State University's filing of lawsuits against the Alabama State Board of Education.[4] Regardless of the propriety of the District Court's issuance of the injunction against the Alabama State Board of Education on the basis of the experience requirement or the retaliatory motive premises, it is clear that the District Court issued the injunction in favor of Alabama State University in its institutional capacity and not on the basis of the institution's standing derived from the rights of third parties.

VI. SUMMARY OF THE ARGUMENT

Alabama State University has no rights under the Fourteenth Amendment or Title VI, 42 U.S.C. § 2000d, *et seq.* (1964), under the facts of this case. The University cannot garner such a right on the basis that its compliance with a state regulation would require it to violate its duty under the Constitution of the United States not to discriminate on the basis of race. The state regulation at issue is neutral on its face and, thus, does not implicate the constitutional conflict implied by Alabama State University.

Alabama State University's failure to challenge the Court of Appeals' holding that it has no rights against its creator forecloses the University from premising its

4. This finding was challenged by respondents on the appeal below. The Court of Appeals did not directly address this issue, deeming motivation irrelevant to the issuance of a preliminary injunction.

standing on rights of third parties. Moreover, Alabama State University and the third parties lack any relationship supportive of the University's claimed ability to assert third party rights. The third parties whose rights the University seeks to assert are separate litigants in this lawsuit. Thus, the University cannot base its standing on these third parties' rights.

Alabama State University has consistently asserted its own, institutionally personal rights in this litigation. The interests of the University and the third party individuals are not identical. Thus, the Court of Appeals was correct in proceeding to determine the standing of Alabama State University.

VII. ARGUMENT

A. Alabama State University Has No Independent Constitutional Or Statutory Rights Against Its Creator And Cannot Acquire Such Rights Arising Out Of Its Duty To Comply With A Neutral State Regulation

The Petition for Writ of Certiorari should be denied because Alabama State University has no independent right to assert claims under the due process or equal protection clauses of the Fourteenth Amendment or Title VI, 42 U.S.C. § 2000d, *et seq.*, (1964). against the Alabama State Board of Education arising out of actions by the Alabama State Board of Education in consonance with that Board's authority over teacher education programs. The Court of Appeals held, without adopting any *per se* rule, that Alabama State University, as a creature of the

State of Alabama, has no rights under the Fourteenth Amendment or Title VI, 42 U.S.C. § 2000d, *et seq.* (1964). The Court of Appeals premised its judgment on a line of cases in this Court including *Cannon v. University of Chicago,* 441 U.S. 677, 99 S.Ct. 1946, 60 L.Ed.2d 560 (1979); *Coleman v. Miller,* 307 U.S. 433, 59 S.Ct. 972, 83 L.Ed. 1385 (1939); *Williams v. Mayor and City Council of Baltimore,* 289 U.S. 36, 53 S.Ct. 431, 77 L.Ed. 1015 (1933); *City of Trenton v. State of New Jersey,* 262 U.S. 182, 43 S.Ct. 534, 67 L.Ed. 937 (1923); and *Hunter v. City of Pittsburg,* 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907). As noted by the Court of Appeals, generally these cases stand for the proposition that creatures of a state have no standing to invoke *certain* constitutional provisions in opposition to the will of their creator.

Alabama State University, petitioner, argues that the Court of Appeals overlooked Alabama State University's duty to obey the Constitution of the United States. Alabama State University claims that this duty permits it to file a lawsuit against the State, citing *Board of Education v. Allen,* 392 U.S. 236, 241 n.5, 88 S.Ct. 1923, 1925 n.5, 20 L.Ed.2d 1060, 1064 n.5 (1968). In sum, Alabama State University argues that it has a right under the Constitution and the laws of the United States to challenge actions of its creator if those actions interfere with Alabama State University's duty under the Constitution.[5]

---

5. Obviously the retaliation claims of Alabama State University (even if true) do not support its right to file suit. Alabama State University has no constitutional duty to file lawsuits. Moreover, the retaliation claims against the Alabama State

(Continued on following page)

Even if Alabama State University's claims in this regard are correct, they are unavailing. The facts in this case demonstrate that Alabama State University's compliance with the regulations of the Alabama State Board of Education at issue could not put it in opposition to any duty which it has under the Constitution of the United States.

The regulations of the Board requiring *some*, not all, faculty members in teacher education programs to have experience in their teaching fields is neutral on its face. It does not require any institution of higher education to give hiring preference to any person because of race or any other impermissible factor. Even if this neutral regulation had a racially disparate result of which the Alabama State Board of Education was aware, that alone is insufficient to establish a violation of the Fourteenth Amendment. *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 99 S.Ct. 2282, 60 L.Ed.2d 870 (1979); *Washington v. Davis*, 426 U.S. 229, 96 S.Ct. 2040, 48 L.Ed.2d 597 (1976); and *Alexander v. Louisiana*, 405 U.S. 625, 92 S.Ct. 1221, 31 L.Ed.2d 536 (1972).

Moreover, it is extremely important to emphasize that the regulation does not require that all teacher education program faculty members hired by an institution of higher education have experience. Thus, even if Alabama State University's claim that black educators have less experi-

---

(Continued from previous page)

Board of Education cannot withstand scrutiny. As is clear from the opinion of the District Court and the amendment to the preliminary injunction (see appendix to Petition for Writ of Certiorari) the Board approved some of Alabama State University's programs. Such an action hardly implies retaliation.

ence due to previous racial discrimination is correct, it does not follow that Alabama State University would be unable to hire black faculty as a consequence of following the Alabama State Board of Education's faculty experience regulation.

In sum, the facially neutral regulation of the Alabama State Board of Education concerning the faculty experience requirement cannot place Alabama State University in a position where it must choose between obeying the regulation or following its duty under the Constitution. Indeed, in light of the neutral nature of the faculty experience requirement, Alabama State University's argument about being placed in conflict with its constitutional duties makes sense only if Alabama State University lawfully could prefer the employment of blacks. Obviously such racial preferences cannot withstand scrutiny. *Bob Jones University v. United States*, 461 U.S. 574, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983).

Under such circumstances, the Court of Appeals was correct in determining that under the facts of this case Alabama State University has no rights under the Fourteenth Amendment or under Title VI, 42 U.S.C. § 2000d, *et seq.* (1964). For this reason, the Petition for Writ of Certiorari should be denied.

B. Alabama State University Legitimately Cannot Premise Its Standing On The Rights Of Third Parties Who Are Already Represented In This Litigation.

Alabama State University argues that the cases relied upon by the Court of Appeals in holding that Alabama State University has no federally protected rights as

against its creator do not consider the situation where the governmental entity whose standing is challenged was asserting claims on behalf of persons who "indisputably have federal rights. . ." Petition for Writ of Certiorari at 6. From this argument, it appears that Alabama State University seeks to bootstrap its standing by claiming to assert rights on behalf of its faculty and students. This argument is unavailing for several reasons.

Consistent with the Constitution's "case or controversy" requirement in Article III, this Court has insisted that litigants have standing to challenge actions the propriety of which the litigant seeks to adjudicate.

> [A]t an irreducible minimum, Art. III requires the party who invokes the court's authority to "show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," . . .

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472, 102 S.Ct. 752, 758, 70 L.Ed.2d 700, 709 (1982); *see also Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 260-61, 97 S.Ct. 555, 561, 50 L.Ed.2d 450, 461-62 (1977).

In its arguments requesting this Court to grant its Petition for Writ of Certiorari, Alabama State University appears to accept the holding of the Court of Appeals that under the facts in this case it has no rights and therefore no standing under the Fourteenth Amendment or Title VI, 42 U.S.C. § 2000d, *et seq.* (1964). The essence of the standing question in the first place is whether the

litigant has a "stake" in the case occasioned by a personally suffered actual or threatened injury. Thus Alabama State University's failure to challenge the Court of Appeals' holding that it has no rights should end the standing inquiry. Absent the assertion by Alabama State University of rights personal to it which the Alabama State Board of Education has adversely affected, the University cannot acquire standing by assertion of the rights of third parties. "Those who do not possess Art. III standing may not litigate as suitors in the Courts of the United States." *Valley Forge*, 454 U.S. at 475-76, 102 S.Ct. at 760, 70 L.Ed.2d at 711-12.

Aside from Alabama State University's lack of a personal stake in this controversy, it is equally clear that the University fails to meet the requirements for asserting third party standing. In *Singleton v. Wulff*, 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976), this Court dealt directly with the question of the circumstances under which a litigant may claim standing to vindicate the constitutional rights of third parties. *Singleton* stands for the proposition that the general rule of disallowing standing based on third party rights is not to be applied where the rule's underlying justifications are absent. To make this determination the Court has insisted upon investigation of two factual elements. The first element is investigation of the relationship between the litigant and the person whose rights the litigant seeks to assert. The second factual element to be investigated is the ability of the third party to assert their own rights. *Singleton*, 428 U.S. at 114-15, 96 S.Ct. at 2874-75, 49 L.Ed.2d at 833-34. Analysis of these two factual elements demonstrates that Alabama State University cannot claim standing based on the third party rights of its faculty and students.

The relationship between Alabama State University and its faculty assuredly militates against permitting Alabama State University to assert faculty rights. In the instant case, the right asserted under the Fourteenth Amendment and Title VI, 42 U.S.C. § 2000d, *et seq.*, (1964). is the right to be free of racial discrimination. Previously determined litigation evidences that Alabama State University itself has been guilty of racial discrimination with regard to its faculty. *See Craig v. Alabama State University*, 804 F.2d 682 (11th Cir. 1986); *Craig v. Alabama State Univeristy*, 451 F.Supp. 1207 (M.D. Ala. 1978), affirmed 614 F.2d 1295 (5th Cir. 1980), *cert. denied, sub nom., Dutt v. Alabama State University*, 449 U.S. 862, 101 S.Ct. 167, 66 L.Ed.2d 79 (1980). Thus, the relationship between Alabama State University and its faculty is not such that Alabama State University is as effective a proponent of the asserted right as members of the faculty. *Singleton*, 428 U.S. at 115, 96 S.Ct. at 2874, 49 L.Ed.2d at 833-34. Nor, under the circumstances, can Alabama State University legitimately be recognized as an advocate for the rights of its faculty. Accordingly, these facts weigh heavily against permitting Alabama State University to claim standing to vindicate the rights of its faculty members.

Likewise, there is no special relationship existing between Alabama State University and its students which demonstrates that Alabama State University can be an effective advocate for the rights of its students to be free of racial discrimination. This is especially true with respect to the facts of the instant case where the challenged action relates to regulatory requirements governing teacher education programs. Students have no right, con-

stitutional or otherwise, to attend a particular institution. Thus, the enjoyment of the right to be free of racial discrimination is not inextricably bound up with Alabama State University's desire to offer teacher education programs. Accordingly, Alabama State University cannot claim standing based on the third party rights of its students.

The second factual inquiry necessary to determine whether Alabama State University can premise its standing on third party rights is the ability of the third party to assert its own rights. In the instant case, justification for Alabama State University's standing based on this aspect of third party rights is wholly lacking. The Knight Intervenors represent a class of persons who are present or future students of Alabama State University and persons who were, are, or will be employees of Alabama State University. Thus, the Knight Intervenors represent a class of individuals within which is completely subsumed the category of faculty and students of Alabama State University. Therefore, the Knight Intervenors are the best representatives of Alabama State University's faculty and students. Moreover, the arguments made by Alabama State University in support of its Petition for Writ of Certiorari in this Court call into question whether Alabama State University, under any circumstances, is an appropriate representative of the rights of its faculty and students.

Apparently on the basis of some *parens patrie* notion, Alabama State University argues that it is in the best position to assert third party rights, especially of its students, because the issues in cases such as this one are often com-

plex and students have inadequate resources, lack of familiarity with the issues, and an inability to portray institutional interest. Petition for Writ of Certiorari at 10-11. As previously noted, the Knight Intervenors represent a class of persons consisting largely of faculty members and students of Alabama State University. The arguments advanced by Alabama State University in its "*parens patrie* role" totally undercut the fundamental adequacy of representation requirement of Rule 23, Federal Rules of Civil Procedure. Obviously, Alabama State University's advancement of an argument which directly undercuts the representative capacity of the very persons whom Alabama State University asserts it can represent vividly demonstrates the University's inability to advance appropriately the third party rights at issue in this litigation.

For the foregoing reasons, Alabama State University's claim of standing based on the rights of third parties lacks merit. Accordingly, Alabama State University's Petition for Writ of Certiorari should be denied.

C. The Court Of Appeals Acted Properly When It Determined That Alabama State University Lacked Standing.

Alabama State University also argues that the Court of Appeals erred in determining whether it had standing to pursue claims against the Alabama State Board of Education and State Superintendent of Education because the Court of Appeals determined that the Knight Intervenors did have standing. Principally, Alabama State University relies on *Buckley v. Valeo,* 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed. 2d 659 (1976). In that case, this Court determined that since some of the litigants had a sufficient personal stake

"in a determination of the constitutional validity of *each* of the challenged provisions . . ." there was no need to determine whether each of the litigants met the standing requirement. *Buckley,* 424 U.S. at 12, 96 S.Ct. at 631, 46 L.Ed.2d at 683 (emphasis added). See also *Watt v. Energy Action Educational Foundation,* 454 U.S. 151, 102 S.Ct. 205, 70 L.Ed.2d 309 (1981).

Obviously, this argument fails because the interest of Alabama State University and the interest of the Knight Intervenors are not identical. From the very beginning of this case, Alabama State University has asserted its own rights as an institution. Respondents, Alabama State Board of Education and State Superintendent of Education have called into question the validity of Alabama State University's assertion of those rights. Since the nature of the personal stake which faculty and students may have with respect to the State's enforcement of teacher education regulations is entirely different from the nature of the personal stake which an institution of higher education may have with respect to enforcement of those regulations, it was entirely appropriate and necessary for the Court of Appeals to resolve this issue. The action of the Court of Appeals presents no legitimate basis upon which this Court should exercise its discretionary authority to review the decision below.

———o———

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals with respect to the rights and standing of Alabama State University was correct. Alabama State University advances no arguments which favor granting the Petition for Writ of Certiorari. Accordingly, the Alabama State Board of Education and State Superintendent of Education respectfully request the Court to deny Alabama State University's Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

CHARLES S. COODY
Office of General Counsel
State Department of Education
609 State Office Building
Montgomery, Alabama 36130
(205) 261-5320

Attorney for Respondents Alabama State Board of Education; and Wayne Teague, State Superintendent of Education

January 1987

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	CIVIL ACTION
Plaintiff,	)	NO. CV-83-C-1676-S
VS.	)	
THE STATE OF ALABAMA, et al.,	)	
Defendants.	)	

MOTION AND NOTICE FOR TEMPORARY RESTRAINING ORDER

Realigned Plaintiff Board of Trustees for Alabama State University hereby moves this Court for a Temporary Restraining Order restraining and enjoining the defendants Alabama State Board of Education and Wayne Teague, State Superintendent of Education, their agents, employees, successors, attorneys, and all persons in active concert and participation with them, from failing and refusing to take the necessary steps to recertify the following Education Programs at Alabama State University, pending a hearing and determination of realigned plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction: Class A Superintendent, Class AA Superintendent, Class A General Supervisor, Class AA General Supervisor, and Class AA Reading Supervisor.

Unless this motion is granted, realigned plaintiff Board of Trustees for Alabama State University will suffer im-

mediate and irreparable injury, loss and damage if defendants are permitted to decertify the above-enumerated programs until a hearing can be had on this motion, as more fully appears from the verified Complaint attached hereto.

DATED this 13th day of August, 1985.

Respectfully submitted,

/s/ Solomon S. Seay, Jr.

/s/ Terry G. Davis

Attorneys for Realigned Plaintiff
Board of Trustees for Alabama
State University
732 Carter Hill Road
Post Office Box 6215
Montgomery, Alabama 36106
(205) 834-2000

NOTICE OF MOTION

TO: ALL ATTORNEYS OF RECORD FOR DEFENDANTS IN THE ABOVE-STYLED CAUSE

Please take notice that on the ..... day of ....., 1985 at 9:00 o'clock a.m., or as soon thereafter as counsel can be heard, the undersigned will bring the above motion on for hearing before the Honorable U. W. Clemon, United States District Judge, at the United States Courthouse, Birmingham, Alabama.

/s/ Solomon S. Seay, Jr.

/s/ Terry G. Davis

CERTIFICATE OF COUNSEL

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, the undersigned attorney of record for Realigned Plaintiff Board of Trustees for Alabama State University, hereby certify that a copy of the above and foregoing motion was mailed to the attorneys for all of the parties on the 13th day of August, 1985.

I further hereby certify that a copy of the above and foregoing motion was hand delivered to the Office of Attorney Charles Coody, the attorney representing defendants Alabama State Board of Education and Wayne Teague, State Superintendent of Education, and that I was advised by Mr. Coody's Office that he would be out of town until Thursday, August 15, 1985.

/s/ Solomon S. Seay, Jr.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
VS.	)	CIVIL ACTION NO.
	)	
THE STATE OF ALABAMA, et al.,	)	CV-83-C-1676-S
	)	
Defendants.	)	
	)	

COMPLAINT

Jurisdiction

1. This action arises under the Fourteenth Amendment to the Constitution of the United States, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, *et seq.*, the Civil Rights Act of 1871, 42 U.S.C. §§ 1981 and 1983, and the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988. The matter in controversy exceeds, exclusive of interest and costs, the sum of $10,000. Jurisdiction of this court is invoked pursuant to the provisions of 28 U.S.C. §§ 1331, 1343(3), and 1341(4), 2201 and 2202.

Parties

2. The parties to this action are correctly enumerated in this Court's Principal Pretrial Order dated February 19, 1985; except Livingston University and the University of Montevallo, whose Rule 41(b) motions were granted.

Allegations of Fact

2. Realigned Plaintiff Board of Trustees for Alabama State University in its statement of Amended Claims, heretofore filed in this case, alleged:

> "12. Exercising its authority under *Ala. Code*, Sec. 16-24-14 (1975), the defendant State Board has also prescribed minimum requirements for faculty members in programs for instructional support personnel. Approval of an institution's teacher education program is contingent upon meeting these requirements which include the following:
>
> > a. That they hold an earned doctorate, or the equivalent, with a major emphasis in the field of specialization in which the major workload is assigned;
> >
> > b. That they have a minimum of three years of successful experience as a practitioner in the instructional support area in which the major workload is assigned;
> >
> > c. That at least one faculty member in each instructional support area in which a program leading to certification is offered shall hold an earned doctorate with an area of specialization in that field.
>
> "13. In May 1984, a review team appointed by the defendant State Superintendent of Education recommended that no students be admitted to the following programs at ASU because faculty members in these programs did not meet some or all of the aforegoing faculty requirements:
>
> > a. The Class A and Class AA Superintendent Program: of the two faculty members in this program at ASU, both have the appropriate doctorates, but neither has three years experience as superintendent. One faculty member with an appropriate degree and three years of experience

as a superintendent is required for the Class A program; two such faculty members are required for the Class AA program.

b. The Class A and Class AA General Supervisor Program: of the two faculty members in this program at ASU, both lack the required doctoral level preparation in supervision, and both lack the three years of experience as a supervisor. One faculty member with appropriate preparation and experience is required for the Class A program; two such faculty members are required for the Class AA program.

c. The Class A and Class AA Reading Supervisor Program: of the two faculty members in this program at ASU, both have the required doctoral level preparation, but neither has three years of experience as reading supervisor. One faculty member with appropriate doctoral level preparation and three years of experience as a reading supervisor is required for the Class A program; two such faculty members are required for the Class AA program.

d. The Class A and Class AA Library Media Program: the one faculty member in this program at ASU is fully qualified, but State Board regulations require a minimum of two faculty members meeting the aforesaid requirements for the Class A program. No additional faculty member is required for the Class AA program."

3. The Amended Claims further alleged that:

"14. The State Board's requirements for faculty in programs for instructional support personnel and the recommendations of the May 1984 review team at ASU have an adverse racial impact on black students and traditionally black institutions, including ASU, and they perpetuate the vestiges of the prior *de jure* system of racial segregation at all levels of public

education in Alabama. Because of historical segregation and racial discrimination against black students and black professionals, there are disproportionately few black educators who can satisfy faculty requirements for instructional support personnel programs, namely, three years experience as a superintendent, supervisor, reading supervisor or supervisor of library media and doctoral level preparation in those specific fields of specialization."

"15. The faculty requirements for instructional support personnel programs are not necessary for the successful operation of such programs or for the successful preparation of students in those programs."

"16. The requirements for faculty in instructional support personnel programs have both the purpose and the effect of discriminating against black students, black professionals and traditionally black institutions."

4. The Amended Claims also sought, *inter alia,* preliminary and permanent injunctions restraining and enjoining the defendants from continuing to enforce the minimum faculty requirements for instructional support personnel programs.

5. On, to-wit, the 8th day of August, 1985, the defendant State Board of Education failed and refused to recertify the Class A and Class AA Superintendent Programs, the Class A and Class AA General Supervisor Programs, the Class AA Reading Supervisor Program at Alabama State University, allegedly by reason of the fact that Alabama State University failed to meet the faculty experiential requirement. The Board's action had the purpose and effect of decertifying said programs after September 9, 1985. A copy of the State Board of Education's resolution is attached hereto as Exhibit 1, and incorporated herein by reference and made a part hereof as if herein set forth in full.

6. Faculty personnel assigned to the above-named instructional support personnel programs at Alabama State University are all persons with faculty rank and tenure, and are otherwise qualified except for experiential requirements. Each is black.

7. Experiential requirements adopted by the Board, and the action of the defendant Board in decertifying the programs at Alabama State University have both the purpose and effect of discriminating against black students, black professionals and traditionally black Alabama State University.

8. Unless restrained and enjoined by this Honorable Court, the action of said Board will have the effect of depriving Alabama State University of a major portion of its Teacher Education Program, in violation of due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. §§ 1981 and 1983.

PRAYER FOR RELIEF

WHEREFORE, Realigned Plaintiff Board of Trustees for Alabama State University respectfully prays that this Court take cognizance of this Complaint for Temporary Restraining Order and for Preliminary Injunction, and after careful consideration of the matters and things set forth herein, enter Temporary Restraining Order and Preliminary Injunction:

(1) restraining and enjoining defendants State Board of Education and Wayne Teague, State Superintendent of Education, and all persons in active concert and participation with them, from failing and refusing to recertify the Class A Superintendent,

Class AA Superintendent, Class A General Supervisor, Class AA General Supervisor, and Class AA Reading Supervisor Programs at Alabama State University pending final hearing and determination of this claim;

(2) mandatorily requiring that the defendants State Board of Education and Wayne Teague, State Superintendent of Education, and all persons in active concert and participation with them, recertify the Class A Superintendent, Class AA Superintendent, Class A General Supervisor, Class AA General Supervisor, and Class A Reading Supervisor Programs at Alabama State University pending final hearing and determination of the merits of this claim.

Respectfully submitted,

ADDRESS OF COUNSEL:

/s/ SOLOMON S. SEAY, JR.

732 Carter Hill Road
Post Office Box 6215
Montgomery, AL 36106
(205) 834-2000

/s/ TERRY G. DAVIS

ATTORNEYS FOR REALIGNED PLAINTIFF BOARD OF TRUSTEES FOR ALABAMA STATE UNIVERSITY

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I hereby certify that I have read the foregoing Complaint, and know the contents thereof, and that the matters and things set forth therein are true and correct to the best of my knowledge, information and belief.

/s/ BEATRICE MORSE

SWORN TO AND SUBSCRIBED before me this the 13th day of August, 1985.

/s/ SOLOMON S. SEAY, JR.
NOTARY PUBLIC
STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: 2-1-89

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing COMPLAINT upon the following persons, by placing same in the United States Mail, first-class postage prepaid, on this the 13th day of August, 1985:

Nathaniel Douglas
Franz Marshall
Leverne M. Younger
Pauline A. Miller
Jeanne K. Pettenati
Angela Schmidt
Jeremiah Glassman
General Litigation Section
Civil Rights Division
Department of Justice
Washington, D. C. 20530

Ms. Caryl P. Privett
Assistant United States Attorney
Room 200, Federal Courthouse
Birmingham, Alabama 35203

Donald V. Watkins
Watkins, Carter & Knight
1120 South Court Street
Montgomery, Alabama 36104

Mr. James U. Blacksher
Mr. Larry T. Menefee
Blacksher, Menefee &
Stein, P.A.
405 Van Antwerp Building
Post Office Box 1051
Mobile, Alabama 36633

Edward S. Allen
John Richard Carrigan
M. Stanford Blanton
Balch, Bingham, Baker, Ward,
Smith, Bowman & Thagard
Post Office Box 306
Birmingham, Alabama 35201

David R. Boyd
Thomas W. Thagard, Jr.
Balch, Bingham, Baker, Ward,
Smith, Bowman & Thagard
Post Office Box 78
Montgomery, Alabama 36101

Thomas D. Samford, III
Samford & Samford
P. O. Locker Drawer 550
Opelika, Alabama 36803-0550

Ms. Maxey V. Roberts
University of South Alabama
Room 136 Administrative
Building
Mobile, Alabama 36688

T. Michael Putnam
Potts, Young, Blasingame
& Suttle
Post Office Box 1760
Florence, Alabama 35630

Mr. Richard F. Calhoun
Brantley & Calhoun
Post Office Box 965
Troy, Alabama 36081

Mr. Ira DeMent
Mr. Ronald W. Wise
Ms. Joan Van Almen
Dement & Wise
Suite 311, Corporate Square
Montgomery, Alabama 36104

Mr. Walter J. Merrill
Post Office Box 580
Anniston, Alabama 36202

Mr. Joe R. Whatley, Jr.
Mr. John C. Falkenberry
Falkenberry, Whatley & Heidt
Suite 305
2100 16th Avenue, South
Birmingham, Alabama 35205

Mr. Charles S. Coody
Mr. Jeffrey A. Foshee
State Department of Education
State Office Building
Montgomery, Alabama 36130

Robert L. Potts
C. Glenn Powell
Stanley J. Murphy
Charles Self
Robert Rieder
401 Queen City Avenue
Tuscaloosa, Alabama 35401

Mr. William F. Murray, Jr.
Mr. Frederick Ingram
Thomas, Taliaferro, Forman,
Burr and Murray
1600 Bank for Savings Building
Birmingham, Alabama 35203

Mr. Frank C. Ellis, Jr.
Wallace, Ellis, Head & Fowler
Post Office Box 587
Columbiana, Alabama 35051

Carl E. Johnson
J. Scott Green
Bishop, Colvin & Johnson
601-13 Frank Nelson Building
Birmingham, Alabama 35203

Mylan R. Engel
Engel & Smith
Post Office Box 1045
Mobile, Alabama 36633

/s/ Solomon S. Seay, Jr.